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OPP-2003-0324

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(7PP)

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OCT 29 2003

October 29, 2003

**BY COURIER DELIVERY**

Public Information and Records Integrity Branch ("PIRIB"), Rm. 119  
Office of Pesticide Programs ("OPP")  
U.S. Environmental Protection Agency  
Crystal Mall #2  
1921 Jefferson Davis Highway  
Arlington, VA 22202

Re: Docket Control Number: OPP-2003-0324

Gentlemen:

On behalf of Elementis Chromium L.P., I am submitting the enclosed comments with respect to the above-referenced matter. This concerns the Federal Register Notice published September 29, 2003 regarding Receipt of Requests to Cancel Certain Creosote and Acid Copper Chromate Wood Preservative Products. Thank you for your consideration of these comments.

Very truly yours,

  
John Quarles

Enclosure

Environmental Protection Agency  
Docket Identification Number OPP-2003-0324 (EPA's Notice of Receipt of  
Requests to Cancel Certain Creosote and Acid Copper Chromate Wood  
Preservative Products . . . 68 F.R. 55952).  
Public Information and Records Integrity Branch (PIRIB), Rm. 119  
Crystal Mall #2  
1921 Jefferson Davis Hwy.  
Arlington, VA

These comments are submitted on behalf of Elementis Chromium L.P.  
("Elementis") in response to the Environmental Protection Agency ("EPA") Notice  
of Receipt of Requests to Cancel Certain Creosote and Acid Copper Chromate  
Wood Preservative Products, and/or to Terminate Certain Uses of Other  
Creosote Products, published in the Federal Register on September 29, 2003 (68  
Fed. Reg. 55952).

As a preliminary comment, we wish to point out that the Notice is not fully  
consistent with Section 6(f)(1) of the Federal Insecticide, Fungicide and  
Rodenticide Act (FIFRA). That statutory provision specifies that in any case  
when a request to cancel a pesticide registration is received, before acting on the  
request, EPA "shall publish in the Federal Register a notice of the receipt of the  
request and provide for a 30-day period in which the public may comment." The  
statute further states that after complying with these requirements "the  
Administrator may approve or deny the request." These statutory requirements  
clearly indicate that the question of whether an existing registration should be  
cancelled is more than merely a matter to be resolved between the registrant and  
EPA. The general public also has an interest and members of the public are  
given a right of participation. After comments have been submitted, EPA must  
exercise a discretion as to whether to "approve or deny" the request. Under long  
established principles of administrative law, there is an obligation on EPA to  
exercise its discretion in a manner that takes into account the interests of the  
general public.

In this instance, however, the EPA notice gives no suggestion that the Agency is  
interested to receive the comments of the public, or intends to pay any attention  
to them. Instead, the notice advises that "Users of these pesticides or anyone  
else desiring the retention of a registration or particular use should contact the  
applicable registrant directly." EPA makes its own intent clear, stating that  
"Unless a request is withdrawn by October 29, 2003, the Agency intends to issue  
orders granting these requests to cancel . . ." In other words, the comments of  
the public will be irrelevant to the decisions of EPA -- not a sound policy, and  
not what the statute expects.

It is the position of Elementis, as set forth in the attached letter dated 13 October  
2003 from Elementis plc Chief Executive Geoff Gaywood, that eliminating the  
wood preservative Acid Copper Chromate ("ACC") from the market place is not

required or supported by the regulatory framework, is not consistent with sound science, and is contrary to the general public interest. We ask that this letter be made a part of these comments and included in the public docket on this matter.

There is a fundamental and essential public need for wood treatment products (wood preservatives) that are reliable, safe, and cost effective. Given the recent cancellation of most residential uses of CCA, the principal remaining alternatives are ACC, ACQ (Alkaline Copper Quat a/k/a Ammoniacial Copper Quat) and CA (Copper Azole). However, ACC has distinct advantages over the alternatives, as further explained below. Under the statutory provisions of FIFRA governing registration of pesticides, efficacy, cost and environmental/health impacts are the critical factors to be considered. Moreover, the Administrative Procedure Act, FIFRA, the Data Quality Act, P.L. 106-554, H.R. 5658, Section 515, and EPA's own implementing guidelines thereof ("Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency") the Regulatory Flexibility Act, and Office of Management and Budget guidelines require consideration of factors of efficacy, safety and cost in evaluating pesticide registrations such as the registration for ACC.

In order for ACC to be preserved on the market, it is not necessarily essential for the Osmose registration to continue. EPA does have pending before it applications for "me too" registrations submitted by other prospective registrants. Since those applications depend on the Osmose registration, which was fully in effect when their "me too" applications were filed, however, it would send the wrong signal for EPA to approve the Osmose cancellation without previously approving the pending "me too" applications.

We are aware that EPA is currently conducting a Reregistration Eligibility Decision (RED) review of ACC in conjunction with its ongoing RED review of the remaining uses of CCA. As part of that review of ACC, EPA will evaluate all scientific and other relevant questions regarding whether the expected use of ACC would cause any significant health or environmental adverse effects. In a letter dated June 19, 2003 from Mr. Sanders to Mr. John Taylor of Osmose, Inc., EPA/OPP/AD advised that the following data for ACC will be necessary to confirm the results of its risk assessment and will be required in the RED: 1) data regarding speciation of chromium on the surface of wood treated with ACC, 2) data regarding the levels of exposure and speciation of chromium in both the inhalation and dermal routes to workers treating wood with ACC, 3) data on form and quantity of preservative chemical residue (copper, trivalent and hexavalent chromium) released into the environment, 4) data on conditions under which hexavalent chromium reduces to trivalent chromium in the wood. Obligations to conduct such studies and generate such data should be incorporated into any "me too" registrations that are approved, thereby in effect fully substituting the new registrants for Osmose as the parties responsible to demonstrate that ACC does not create unacceptable risks. That done, however, the RED process

would provide the proper opportunity to consider all significant questions and all relevant information in a review that offers time for thorough review and established procedures for public comment.

We understand that in its preliminary evaluation of possible ACC risks to date, EPA looked first at the data generated on CCA, after excluding the information regarding arsenic. Although ACC uses higher amounts of chromium - perhaps in the range of 20% to 40% more - than CCA, it is not generally accepted that such levels pose a risk to health or the environment. EPA has expressed concern that there will be higher residue rates of hexavalent chromium, that a longer fixation period means that there will be opportunity for exposure within the retail sales sector and also for consumers, and that this exposure could result in a "burn" in the skin exposed to such contact. However, the actuality of such exposure is remote. The nature of health effects at risk are relatively minor and they do not entail serious medical risk. The contrast to CCA is huge, with arsenic out of the equation.

By contrast, elimination of ACC will cause serious adverse economic and societal impacts. There will be severe consequences to sizable numbers of small business treaters being shut down by not being able to afford the capital costs of new equipment required to handle replacement wood preservatives other than ACC. People will lose their jobs.

ACC exhibits certain advantages over the alternatives and there is no reason why ACC should not be registered. The alternatives cost \$75-100 per thousand board foot, whereas ACC is about \$35 per thousand board foot. Additionally and not included in those production costs is equipment changeover requirements which would be greater for alternatives such as ACQ. For the same use category ACC has lower levels of copper than the other copper-based CCA alternatives. This is because chromium in ACC "fixes" the copper into the wood better than in the alternatives that do not contain chromium. Consequently there is less copper leached from the wood during the useful life of the wood and during its subsequent disposal. This reduces the environmental impact of soluble copper compounds leached from the treated wood. ACQ and CA are corrosive to mild steel therefore requiring the use of stainless steel in process equipment and fasteners. ACQ and CA have a longer treating cycle therefore increasing costs to treaters.

In summary, Elementis believes that the pending ACC Reregistration Evaluation Decision (RED) process is the right process to consider whatever questions EPA or others may have as to the alleged risks and potential benefits of allowing use of ACC. There is no substantial downside to allowing use of ACC under conditional registrations that require the registrant(s) to perform studies and provide whatever information EPA would need for complete analysis of the risk issues. EPA should make that review through the RED process, which is already underway in connection with the RED for CCA and will be completed within the

next two years. That would provide the benefits of more complete information, more thorough evaluation, and an open and public process.

We urge that EPA not approve the request by Osmose to cancel its registration without first evaluating all of the related questions as to what wood preservatives will most beneficially meet the needs of society to be able to use wood treatment products that are reliable, safe, and cost effective. We believe that to best fulfill the overall public interest -- taking all aspects and factors into account -- EPA should grant the pending "me too" registration applications and only then approve the request by Osmose to cancel its registration.

Thank you for considering these comments.

13 October 2003

Mr Stephen L Johnson  
Acting Deputy Administrator  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
USA

Dear Mr Johnson

Re: FIFRA Registration of ACC

I am writing to you on behalf of Elementis Chromium LP to request your consideration of critical questions now pending before EPA with respect to registration of the wood preservative Acid Copper Chromate, or "ACC." We are concerned that EPA may take precipitous actions that would eliminate this product from the market place. We believe that such a result would be contrary to the national public interest and that there is no reason in the regulatory framework that would require or support such a result.

This is a critical time in the wood preservative industry. On February 12, 2003 EPA approved the cancellation of registrations for most uses of CCA, which for 70 years had been the most common preservative for wood products to be used for residential and many other purposes. Production and sale of CCA for those purposes will be totally phased out effective December 31, 2003. That has forced a search for alternatives to meet continuing vital needs for such products. The range of alternatives is narrow, generally regarded as consisting of only three products capable of meeting those needs. One of those is ACC.

For both wood treaters and consumers, ACC offers important advantages. First, for the treaters, ACC is a preservative they can use without facing the necessity of installing costly new equipment. Those wood preservation plants - and their employees - may face economic hardship if they are unable to use ACC. Second, ACC would also be less costly for consumers. Third, ACC can offer benefits in situations where there may be concern with potential corrosion, mold, or leaching. Continuance of registration for ACC is also important to Elementis, and particularly to our employees at our Castle Hayne, North Carolina plant, since the earlier EPA decisions on CCA forced layoffs, and EPA actions on ACC will have serious economic impacts on our operations.

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We recognize that the only company with a currently valid registration for ACC has filed a request with EPA to cancel that registration. EPA has noticed that request in the Federal Register and set a 30-day public comment period on it that will end on October 29, 2003. Approval of that cancellation at the end of the public comment period could spell the doom for use of ACC, since it would in effect force every wood treater to make the costly investments and change over to other preservatives – or go out of business.

EPA does not need to cause such draconian effects. The Agency has received several recent applications for “me too” registrations, which would rely in part on prior EPA approvals of ACC. EPA could approve those applications and impose conditions on the applicants to conduct studies and submit other data that EPA might require, subject to specific deadlines, to support continuance of the registrations on any long-term basis.

We are aware that EPA has recently initiated an evaluation of ACC under the Reregistration Evaluation Decision (“RED”) process. The approach we are urging would simply substitute the new applicants for the current registrant in providing data needed to satisfy the RED review. The RED process is the right process to consider any questions that may exist with respect to ACC. It provides the opportunity for careful scientific review and public comment. We expect the RED process for ACC would be completed in approximately two years.

We understand that EPA does not currently possess any evidence of adverse effects on human health or the environment that would call for or justify cancellation of an existing registration of ACC for these uses, in the absence of a request for such cancellation by the current registrant. Whatever may be the business reasons that caused the sole ACC registrant to request such cancellation, there are bigger interests at stake. An entire national industry of wood treaters will be affected, and some forced out of business. Consumer choice will be unnecessarily restricted. Higher costs will be imposed across the board. Yet we know of no study that would even suggest that serious health effects could be caused by the use of ACC for the proposed purposes.

For all these reasons we urge EPA to take a constructive approach that reflects a broad recognition of all aspects of the public interest, and in pursuit of that interest to approve the pending requests for me too registrations, subject to such conditions as may be appropriate, before EPA approves the cancellation of the existing registration on which those pending applications would depend.

Thank you for your consideration of this important matter that will affect people throughout the entire country.

Yours sincerely



Geoff Gaywood  
Chief Executive